

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICTORIO M. STEPHENS,

Plaintiff(s),

vs.

CAPTAIN S. PADGET, A.D.A.
COORDINATOR,

Defendant(s).

No. C 05-4972 TEH (PR)

ORDER DIRECTING
PLAINTIFF TO EFFECTUATE
SERVICE

Plaintiff, a prisoner incarcerated at the Santa Clara County Jail in San Jose, California, has filed a pro se civil rights complaint for damages under 42 U.S.C. § 1983 claiming violation of his civil rights based on inadequate medical care. He also claims violations of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"). The Court previously dismissed Plaintiff's complaint with leave to amend on two occasions. On August 8, 2007, the Court issued an order of service of the second amended complaint on Defendant Captain S. Padget, A.D.A. Coordinator at the Santa Clara County Jail, and dismissed all other defendants from this action. On August 30, 2007, the summons as to Defendant Padget was returned unexecuted due to his retirement.

In cases wherein the plaintiff proceeds in forma pauperis, the "officers of the court shall issue and serve all process." 28 U.S.C. § 1915(d). The court must appoint the Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the court, must serve the summons and the complaint, see Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994), overruled on other

1 grounds by Sandin v. Connor, 515 U.S. 472 (1995). Although a plaintiff who is
2 incarcerated and proceeding in forma pauperis may rely on service by the
3 Marshal, such plaintiff “may not remain silent and do nothing to effectuate such
4 service”; rather, “[a]t a minimum, a plaintiff should request service upon the
5 appropriate defendant and attempt to remedy any apparent defects of which [he]
6 has knowledge.” Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987).

7 Here, Plaintiff’s second amended complaint has been pending for over 120
8 days, and thus, absent a showing of “good cause,” is subject to dismissal without
9 prejudice. See Fed. R. Civ. P. 4(m). Plaintiff has not provided sufficient
10 information to allow the Marshal to locate and serve Padget; consequently,
11 Plaintiff must remedy the situation or face dismissal of his complaint without
12 prejudice. See Walker, 14 F.3d at 1421-22 (holding prisoner failed to show cause
13 why prison official should not be dismissed under Rule 4(m) where prisoner
14 failed to show he had provided Marshal with sufficient information to effectuate
15 service).

16 Accordingly, **within thirty (30) days** of the date this order is filed,
17 Plaintiff must either (1) himself effect service on Defendant Padget; (2) provide
18 the Court with an accurate current location such that the Marshal is able to effect
19 service; or (3) file a motion requesting that the Court obtain a forwarding address
20 under seal and direct service on Defendant Padget. If Plaintiff fails to remedy the
21 situation within that time, Plaintiff’s claims against said defendant will be
22 dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil
23 Procedure.

24 SO ORDERED.

25 DATED: 06/19/08



26 THELTON E. HENDERSON
27 United States District Judge
28